

### **REMARKS**

This is in response to the Office Action mailed January 25, 2006.

Claims 1-17 are pending in the application.

Claims 12-17 are rejected under 35 USC §101, because the Examiner alleges that the claimed recitation of a use, without setting forth any active, positive steps results in an improper process claim under 35 USC §101.

The Examiner further rejects claims 12-17 under 35 USC § 112, second paragraph, alleging that the claims are indefinite. Specifically, the Examiner rejects claims 12-17 for reciting the use of an inulin type fructan in the manufacture of a composition alleging that the claims do not set forth any steps involved in the method or process.

Claims 1-4, 7 and 12-17 are rejected under 35 USC §102(b) as being allegedly anticipated by Japanese Application Publication No. 07-099965.

Claims 1, 7-11, 12, 16 and 17 are rejected under 35 USC §102(b) as being allegedly anticipated by Japanese Application Publication 08-034701.

Claims 1, 5 and 6 are rejected under 35 USC §103(a) as being allegedly obvious over Japanese Application Publication 06-040801 (hereinafter the Wada publication) in view of Japanese Application Publication 05-038284 (hereinafter the Takama publication).

Applicants respectfully traverse the Examiner's rejections.

Without acquiescing in the basis for the rejections and for the purpose of expediting prosecution, applicants have amended the claims rejected under Sections 101 and 112 to obviate these rejections.

Without acquiescing in the basis for the rejection and for the purpose of expediting prosecution, applicants have obviated the anticipation rejection by amending the rejected claims to include recitations from claim 5.

Applicants respectfully traverse the obviousness rejections on the following basis. Regarding the Wada publication, this reference is directed to a preservation solution comprising trehalose, which is quite different from raffinose. Regarding raffinose in the Wada publication, the reference mentions raffinose in the "Prior Art" section and in this section is mentioned a solution for transplants comprising both sodium lactobionate and

raffinose as a non-penetrating agent. Furthermore, the discussion in the Wada publication regarding raffinose does not describe specific amounts. Also, the Wada publication teaches that the raffinose solution is not preferable because the solution is instable and must be stored at a low temperature. Moreover, the Wada publication does not teach how raffinose acts as an organ preservative. In addition, the skilled artisan at the time of filing would have not have had a reasonable expectation of success in substituting raffinose with inulin fructan. Accordingly, the Wada publication by itself does not teach or suggest the claimed invention.

Regarding the Takama publication, this reference does not teach or suggest the claimed invention. In addition, the Takama publication relates to “the sperms of a required viable cell preservative” (see Takama at [0001]), which is not an analogous art to the claimed invention which relates to an “organ preservation.” Therefore, Takama cannot be relied on as a reference under U.S.C. § 103 (See MPEP 2141.01(a) I, at 2100-127, (Rev. 3, August 2005)).

Regarding the Examiner’s citation of the two references together, applicants respectfully submit that neither reference would motivate the

skilled artisan to combine the two references. In addition, when combined, the two references together do not teach or suggest the claimed invention.

Accordingly, applicants respectively submit that the claimed invention is not *prima facie* obvious over the cited references.

Moreover, the cited references do not teach or suggest the superior properties of the claimed invention. For example, applicants respectfully direct the Examiner to the comparative test in the examples of the specification which compare the results of Compositions 1 to 6 to that of a composition comprising trehalose or raffinose (Compositions 8-12). The results show superior results of compositions 1-6 over compositions 8-12.

Conclusion

In view of the above amendment and arguments, applicants respectfully request the Examiner to reconsider and withdraw the outstanding rejections. Notification of allowance is earnestly solicited. The Examiner is requested to contact the undersigned attorney at the number listed below for any reason related to the advancement of this case.

Respectfully submitted,

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